

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal No. 151 of 1992 (P)

(Against the Judgement and Order dated 30.04.1992 passed by the learned 2nd Additional Sessions Judge, Dumka, in S.C. No. 259 of 1991.)

1. Binod Chaudhary @ Indu Mandal		
2. Anil Chaudhary	Appellants
Versus		
The State of Bihar (Now Jharkhand)	

Respondent		

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA
HON'BLE MR. JUSTICE Dr. S.N.PATHAK

For the Appellants	: M/s. Rajeeva Sharma, Sr. Advocate Rita Kumari, Advocate Nitu Singh, Advocate
For the State	: M/s. Ram Prakash Singh, A.P.P.

C.A.V. on 28.02.2017 **Pronounced on 03.04.2017**

H.C. Mishra, J.:- Heard learned counsel for the appellants and the learned counsel for the State.

2. The appellants are aggrieved by the Judgement of conviction and Order of sentence dated 30.04.1992 passed by the learned 2nd Additional Sessions Judge, Dumka, in S.C. No. 259 of 1991, whereby both these appellants were convicted for the offence under Section 302 of the Indian Penal Code, and upon hearing on the point of sentence, they were sentenced to undergo rigorous imprisonment for life.

3. The case relates to triple murder. The F.I.R. was instituted on the basis of the *fardbeyan* of Bhola Mandal, who happens to be the father of two of the deceased, namely, Kanti Mandal and Makuni Mandal. According to the prosecution case, on 18.06.1990 in the early morning at about 3:00-4:00 A.M., both the aforesaid sons of the informant were going to bring paddy straw (*Puwal*) on bullock carts from another village namely, Parekesho. The informant and one Rohan Chaudhary of their village also accompanied them. Rohan Chaudhary sat along with Kanti Mandal and the informant sat along

with Makuni Mandal (on the two bullock carts on which they were going to bring the paddy straw, as has come in the evidence). In the way the informant got the call of the nature and he got down from the bullock cart and went towards the river for easing himself and the bullock carts proceeded. After some time he heard the alarm raised by his sons and he rushed towards the bullock carts which were going ahead, and when he reached near, he saw the appellants Binod Chaudhary @ Indu Mandal and Anil Chaudhary who are own brothers, and Suresh Chaudhary and Sarjug Mamrik. There were two to three other persons also whom the informant did not identify. Out of fear the informant concealed himself in the *Palash* forest. In the meantime several persons from the village Narhibaran had assembled there, but the informant kept himself concealed. In the meantime several persons of the informant's village, i.e., Ghongha Dhekcha also reached there and upon hearing the voices of the persons of his village he came out of the forest. By that time the darkness had started clearing off, and he found four persons (named in the F.I.R.) of Narhibaran village and more than 11 persons of his own village assembled there whom he informed about the accused persons. When his son Kanti Mandal gained some consciousness he named Anil Chaudhary and Binod Chaudhary. (*Though it is not stated in the FIR, but in the evidence it has come that Rohan Chaudhary was found dead on one bullock cart at the spot*). Both the injured were taken to Nonihat hospital for treatment but Kanti Mandal died in the way, and before his death, he named Binod Chaudhary and Anil Chaudhary. They took the dead body of Kanti Mandal and the injured Makuni Mandal to Nonihat hospital where the police papers were demanded and thereafter they proceeded towards the Jarmundi hospital. In the meantime one police jeep arrived and took the injured Makuni Mandal to Jarmundi hospital, but in the way Makuni Mandal also died, whose dead body was brought to the police station.

The informant had brought the dead body of his son Kanti Mandal to the police station on the bullock cart. The informant has stated that the occurrence had taken place due to long drawn enmity between the parties, as the accused Binod Chaudhary was taken in adoption by the aunt of the informant and both the brothers were demanding partition of the family property for which there were litigations also between them. In the previous evening there was a *panchayati* also for partition of the family property in which both the accused were also present and there was a quarrel between Anil Chaudhary and Makuni Mandal, who had also threatened. The informant alleged that due to this long drawn enmity both the sons of the informant and Rohan Chaudhary were murdered by the accused persons. The *fardbeyan* of the informant to the aforesaid effect was recorded near Motihara River at 8:30 hours, on the basis of which Jarmundi P.S. Case No. 71 of 1990, corresponding to G.R. No. 537 of 1990 was instituted against four named accused persons and three to four unknown persons and investigation was taken up. After investigation the police submitted the charge-sheet only against the accused Binod Chaudhary @ Indu Mandal and Anil Chaudhary, who faced the trial.

4. After commitment of the case to the Court of Session, charge was framed against both the accused for the offence under Section 302 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. In course of trial 12 witnesses were examined by the prosecution, including the informant, the I.O., and the doctor who had conducted the *post-mortem* examination on the dead bodies. It may be stated at this place that P.W.-2 Jaganath Chaudhary, P.W.-4 Madan Chaudhary (son of Rohan Chaudhary, the deceased), P.W.-5 Laxman Layak, P.W.-6 Upendra Chaudhary, P.W.-7 Naresh Chaudhary

and P.W.-8 Govind Chaudhary, had become hostile at one point or the other.

5. Though in the F.I.R. the informant has named the four accused persons without attributing any allegation of assault against them, or stating that they were armed with any weapon, as also it appears from the F.I.R., that the time of occurrence was still dark and upon seeing the accused persons the informant had concealed himself in the *Palash* forest and he came out only after hearing the voices of his own villagers, when the darkness had started clearing off, which makes it doubtful whether the informant was an eye witness to the occurrence, the informant Bhola Mandal, who was examined as P.W.-10 in the case has attributed the allegation of assault against the accused persons, stating that they were variously armed, claiming to be the eye witness to the occurrence. This witness has stated that the occurrence is of the night between Sunday and Monday at about 3:00-4:00 A.M. in the morning. This witness and his sons Kanti Mandal and Makuni Mandal were going on bullock carts for bringing paddy straw from Parekesho village, whereas Rohan Chaudhary was also going with them to another village. They were going on two bullock carts and when they reached near Motihara River the informant got the call of nature and he went to ease himself. Both the bullock carts proceeded further. After easing himself he heard the alarm raised by his sons, whereupon he went running and saw Binod Chaudhary, Anil Chaudhary, Suresh Chaudhary and Sarjug Mamrik and three other persons, whom he did not identify, all of them were assaulting Kanti, Makuni and Rohan. Binod and Suresh were armed with *Tanga*, Anil was armed with *Barchi*, Sarjug was armed with *Tanga* and the three unknown persons were also armed with *Lathi* and *Tangi* and they all were assaulting all the three persons. This witness concealed himself in the *Palash* bushes out of fear. Other persons of village Narhibaran and of the

informant's village reached there, whereupon he came out of the bushes and went to the place of occurrence. By that time the accused persons had fled away. Rohan was found dead on one bullock cart, Makuni and Kanti were alive. This witness informed all the persons who had assembled that all the four named accused persons and three unknown persons had assaulted all the three victims by *Tangi* and *Barchi*. Kanti and Makuni were taken on a bullock cart to Nonihat hospital. Sitaram Mandal, Bichhu Khirhar, Upendra Chaudhary, Govind Chaudhary and Bhikhal Chaudhary of his village also accompanied them. In the way Kanti Mandal gained consciousness and he informed that Anil Chaudhary and Binod Chaudhary had assaulted them. Thereafter he again became unconscious and after some time he died. They reached Nonihat hospital, but the doctor asked for the police papers. Thereafter they were taking both the victims to Jarmundi, in the way police jeep arrived and Makuni was taken to Jarmundi hospital on the police jeep, but he died in the way. This witness has stated that his statement was recorded by the police near Motihara river whereupon he had put his signature, which he identified, which was earlier marked Exhibit 1/10. Other witnesses had also put their signatures. This witness has also stated that his Aunt had taken Binod Chaudhary as son in adoption and there was property dispute between them. He has stated about the *panchayati* held between the parties in which the threatening was also given. He has identified both the accused in the Court. This witness was put to cross-examination and in his cross-examination he has admitted that there was criminal case also between them in which he was an accused. He has also stated that village, Parekesho (where they were going to bring the paddy straw) was at a distance of about 10 to 11 miles from his village. He has also stated that when he reached the place of occurrence, he saw that the oxen were unyoked from the bullock carts, two of them were

ties in the wheel of one bullock cart and two of them had fled away. Rohan was lying dead on one of the bullock carts. He has stated that he and the villagers of Narhibaran had reached the place of occurrence at the same time and he had informed them about the occurrence. He has further stated that it was a moon-lit night in which he had seen the occurrence, but he did not raise any alarm and he concealed himself. This witness has also stated that he had sent Dhaneshwar and Bishwanath Chaudhary to the police station and the names of the accused persons were also informed to them. They returned back from the police station at about 6:00 to 6:30 A.M. He has also stated in his cross-examination that he had not gone to the police station, rather he had gone there in the evening of Monday. His attention was drawn towards his statements made in the *fardbeyan* and he has stated that he had got it recorded in the *fardbeyan* that Binod Chaudhary, Anil Chaudhary, Saresh Chaudhary and Sarjug Mamrik and three to four other persons were assaulting Kanti and Makuni by *Lathi*, *Tangi* and *Barchi* which he had seen. He has denied the suggestion that he had stated before the police that he had only seen those persons. He has also stated that he got it recorded in the *fardbeyan* that Kanti Mandal informed that Anil Chaudhary and Binod Chaudhary had assaulted them. He has denied the suggestion to have given false evidence due to enmity.

6. P.W.-1 is Sitaram Mandal, who has supported the prosecution case, but he had reached the place of occurrence upon knowing about it. When he reached the place of occurrence he found Kanti Mandal, Makuni Mandal and Bhola Mandal there. Rohan Chaudhary was dead on a bullock cart and Kanti Mandal and Makuni Mandal were badly injured. This witness along with others took the injured to Nonihat hospital. He was informed by Bhola Mandal that Anil Chaudhary and Binod Chaudhary alongwith some other unknown persons had assaulted the deceased and the injured by *Tangi* and

Barchi. While being taken to Nonihat hospital, Kanti Mandal also informed that Anil Chaudhary and Binod Chaudhary had assaulted them and thereafter he died. At Nonihat hospital police papers were demanded. Thereafter they were being brought to Jarmundi, in the meantime the police jeep arrived and Makuni Mandal was taken on the police jeep to Jarmundi hospital, but by the time they reached the hospital, Makuni Mandal also died. The Inquest report of the dead body of Makuni Mandal was prepared whereon this witness and Jagnath Chaudhary put their signatures which he identified and they were marked Exhibits 1 and 1/1. The inquest report of the dead body of Kanti Mandal was also prepared on which this witness and Prabhakar Manjhi put their signatures and on identification they were marked Exhibits 1/2 and 1/3. This witness has also stated about the *panchayati* in the previous evening in which threatening was given by Anil Chaudhary to Makuni Mandal. This witness has identified both the accused in the Court. In his cross-examination this witness has stated that when he reached the police station his statement was recorded by the police which was read over to him and he had put his signature on that. He has stated that the inquest reports were prepared at the police station.

7. P.W.-3 is Dhaneshwar Layak, who also deposed that when he went to the place of occurrence he saw Kanti Mandal and Makuni Mandal in injured condition and he saw Rohan Chaudhary dead on the bullock cart. He has stated that Bhola Chaudhary had informed him that Binod Chaudhary and Anil Chaudhary had assaulted Makuni, Kanti and Rohan by *Tangi* and *Barchi*.

8. P.W.-6 Upendra Chaudhary, had also gone to the place of occurrence upon getting the information about the occurrence and he saw Kanti Mandal and Makuni Mandal in the injured condition and Rohan Chaudhary dead on the bullock cart. Binod Mandal informed them that Anil Chaudhary and Binod Chaudhary had assaulted all the

three. Kanti and Makuni were being brought to hospital but they died. Kanti did not inform anything and at this point this witness was declared hostile by the prosecution.

9. P.W.-9 is Prabhakar Manjhi, who is a witness to the inquest report of the dead body of Rohan Chaudhary which was prepared in Narhibaran forest, upon which this witness and Madan Chaudhary had put their signatures. He has identified the signatures which were earlier marked as Exhibits 1/4 and 1/5. He is also the witness to the inquest report of the dead body of Kanti Mandal and he has identified the signatures of himself and the other witnesses. This witness has stated that Bhola Mandal had given his fardbeyan at the police station in his presence whereupon also he and other witnesses had put their signatures which he had identified and which were marked as Exhibits 1/6 to 1/10.

10. The other important witness in this case is P.W.-4 Madan Chaudhary, son of one of the deceased Rohan Chaudhary. This witness has stated that upon getting the information he went to the place of occurrence along with his villagers, including the informant Bhola Mandal and Indu (accused appellant). At the place of occurrence they found Kanti Mandal, Makuni Mandal lying in the pool of blood. They could not speak anything nor could make any gesture. The dead body of his father was lying on the bullock cart. This witness has clearly stated that no one informed them as to who had assaulted the victims. He is also a witness to the inquest report of the dead body of his father and he has identified his signature and the signature of the witness Prabhakar Manjhi, which were marked Exhibits. This witness was declared hostile at this point and in his cross-examination by the prosecution he had denied the suggestion to have given the statement before the police that Bhola Chaudhary had informed him that Anil Chaudhary and Binod Chaudhary had assaulted his father, Kanti and Makuni by *Barchi* and *Tanga*. He has

also denied the suggestion to have given the statement before the police that Kanti Mandal had informed that Binod Mandal (sic., should be Chaudhary) and Anil Mandal (sic., should be Chaudhary) had assaulted them. In his cross-examination by the defence this witness has clarified that Indu Mandal, who is the accused, had also gone to the place of occurrence along with them.

11. P.W.-2 Jagnath Chaudhary and P.W.-7 Naresh Chaudhary are the other hostile witnesses who have stated that when they went to the place of occurrence they saw Makuni Mandal and Kanti Mandal injured in pool of blood and Rohan Chaudhary was dead. Makuni and Kanti were not in a position to speak and no one informed them as to who had assaulted them. Similarly P.W.-8 Govind Chaudhary is also a hostile witness, who has deposed that both the injured were unconscious and neither Bhola, nor Kanti informed them as to who had assaulted them.

12. P.W.-11 is Dr. Ramanand Sah, who had conducted the *post-mortem* examinations on the dead bodies of all the three deceased on 18.6.1990. On the dead body of Makuni Mandal he found the following *ante-mortem* injuries:-

- i) Incised wound 4" x 1/2" x bone deep over the left parietal region of the scalp.
- ii) Incised wound 4" x 1/2" x bone deep over left side of lambdoid region of the scalp.
- iii) Incised wound 2" x 1/2" x bone deep over the mid of the scalp.

On dissection there was fracture of the left parietal bone about 4" long, fracture of occipital bone about 3 1/2" long and fracture of occipital bone 2" long. On further dissection connecting brains and maninges were found lacerated and blood clot was present in the cranium.

He has stated that the death was caused due to shock and hemorrhage as a result of injuries No. (i), (ii) and (iii), either singularly or collectively, which were sufficient in ordinary course of nature to cause the death. He has identified the *post-mortem* report of Makuni Mandal to be in his pen and signature which was marked Exhibit-2.

On the dead body of Kanti Mandal he had found following *ante-mortem* injuries:-

i) Incised wound 2" x 1/2" x 1/8" over the temporal region of

scalp on left side,

ii) Incised wound 4" x 1/2" x bone deep over the right side of the

scalp.

iii) Incised wound 2" x 1/2" x 1/4" over the forehead.

On dissection there was fracture on the left temporal bone

about 2" long. Fracture of right parietal bone 4" long and

fracture of frontal bone 2" long. On further dissection there

was laceration of connecting brain and maninges and blood

clots were found present in the cranium.

iv) Lacerated wound 2" x 1" x bone deep over right side of face

with fracture of right mandible.

v) Lacerated wound 2" X 1/2" x 1/4" over right forearm in the

middle with fracture of radius and ulna.

He has stated that the death was caused due to assault and hemorrhage as a result of injuries No. (i), (ii) and (iii), either singularly or collectively, which were sufficient to cause death in ordinary course of nature. He has identified the *post-mortem* report of Kanti Mandal to be in his pen and signature which was marked Exhibit-2/1.

On the dead body of Rohan Chaudhary he had found the following *ante-mortem* injuries:-

- i) Incised wound 4" x ½" x bone deep over the right temporal region of the scalp. On dissection there was fracture of right temporal bone 4" long. On further dissection connecting brain and maninges were found lacerated and blood clots were found present in the cranium.
- ii) Diffused swelling over the front of chest. On dissection there was fracture of 2nd to 4th ribs of right side and 2nd and 3rd ribs of left side. On further dissection, connecting pleura and lungs were found lacerated and blood clots were found in the chest cavity.

He has stated that the death was due to shock and hemorrhage as a result of injury No. (i) and (ii), either one of which was sufficient to cause death in the ordinary course of nature. He has identified the *post-mortem* report of Rohan Chaudhary to be in his pen and signature which was marked Ext-2/2. There is nothing of much importance in his cross-examination.

13. P.W.-12 is Bharat Lal Tiwari, who is the Investigating Officer of the case. He has stated that at the police station at about 5:15 A.M. he got the news about the occurrence which he entered into the station diary being entry No. 349 dated 18.06.90 which he has proved and marked Exhibit-3. Thereafter, he went towards the place of occurrence where he reached at 6:45 A.M. He has given the description of the place of occurrence and has stated that he had found blood stains there and the dead body of Rohan Chaudhary was on a bullock cart. He collected the blood stained earth and prepared the seizure list and he also prepared the inquest report of the dead body of the deceased Rohan Chaudhary which he identified to be in his pen and signature and also bearing the signatures of the witnesses which was marked Exhibit-4. This witness has stated that he was informed at the place of occurrence that two other injured Makuni Mandal and Kanti Mandal were taken to hospital, as such he

sent the dead body of Rohan Chaudhary to the police station through police constable and followed the other injured. At about 8:30 A.M., when he reached near Motihara River he recorded the *fardbeyan* of Bhola Mandal. He has identified the *fardbeyan* and the formal F.I.R. to be in his pen and signature which were marked Exhibit-5 and Exhibit-6 respectively. This witness has stated that while he was recording the *fardbeyan* of Bhola Mandal, he sent the injured Makuni Mandal to Jarmundi hospital on police jeep, but he also died in the way. Thereafter they came to police station at 9:20 A.M., and prepared the inquest reports of the dead bodies of Makuni Mandal and Kanti Mandal, which were marked Exhibits 4/1 and 4/2 respectively. This witness has stated about the investigations made by him and his attention was also drawn towards the statements made before him by the hostile witnesses. In his cross-examination he has stated that it is not a fact that the witness Dhaneshwar Layak had given any information at the police station. He has also stated that he had not recorded the statement of Madan Choudhary, who is the son of the deceased Rohan Choudhary, and was a witness to the inquest report. He had also not recorded the statement of any villager of Narhibaran village and he had not recorded the *fardbeyan* of Sitaram Mandal. This witness has also stated that Bhola Mandal had not stated in his *fardbeyan* that he had seen Dilip Chaudhary, Anil Chaudhary, Suresh Chaudhary, Sarjug Mamrik and other three to four persons assaulting Kanti and Makuni by *Lathi*, *Tanga* and *Barchi*, rather he had stated that till he heard the voice of the villagers of Narhibaran village, he was concealing himself in the bushes and he came out only after hearing the voices of his villagers. He had not stated in the *fardbeyan* that his son Kanti Mandal had named Binod Chaudhary and Anil Chaudhary nor had he stated that his son had informed that these accused persons had assaulted them.

14. In their statements recorded under Section 313 of the Cr.P.C. the accused persons have stated that they have been falsely implicated in this case due to land disputes. The defence has also proved the certified copies of the judgements and decrees relating to the land dispute between the parties, as also the map of the village which were marked Exhibits-A series, B-series and C, respectively.

15. Learned counsel for the appellants has submitted that both these accused have been falsely implicated in this case due to previous enmity for the land dispute between the parties. It is submitted by learned counsel that the *fardbeyan* is not the original *fardbeyan* in the case and the original F.I.R. has been concealed by the prosecution for the reasons best known to it and the present F.I.R. cannot be looked into. In support of this contention learned counsel has submitted that the informant P.W.-10 Bhola Mandal has admitted in his cross-examination that he had sent Dhaneshwar and Bishwanath to the police station from the place of occurrence informing them the names of the accused persons. Learned counsel submitted that the information given by Dhaneshwar and Bishwanath at the police station has been concealed by the prosecution in the present case. In this connection learned counsel has also drawn our attention towards the fact that P.W.-1 Sitaram Mandal has stated that his statement was recorded at the police station which was read over to him and he had put his signature on the same and this statement has been concealed by the prosecution. It is further submitted that P.W.-9 Prabhakar Manjhi who is a witness to the *fardbeyan* has stated that the *fardbeyan* was recorded at the police station, whereas the *fardbeyan* shows that it was recorded near Motihara River. Learned counsel has further pointed out from the evidence of I.O., P.W.-12 Bharat Lal Tiwari that he has stated that while he was recording the *fardbeyan* of the informant near Motihara River, he had sent Makuni Mandal for his treatment to Jarmundi hospital. It is submitted by

learned counsel that if this statement is true, then the *fardbeyan* could not have contained the entire statements thereafter that Makuni Mandal died in the way and his dead body was brought to police station etc., as there was no occasion for recording these statements when at the time of recording the *fardbeyan*, Makuni Mandal was only sent for his treatment. Learned counsel accordingly submitted that it is a clear case of concealment of the original *fardbeyan* and the present *fardbeyan* cannot be looked into.

16. Learned counsel further submitted that there is only one witness, who has claimed to be the eye witness to the occurrence, who is P.W.-10 Bhola Mandal, the informant, though he is not at all the eye witness to the occurrence. In the *fardbeyan* there is allegation against none of the named four accused persons and two to three unknown persons, rather it is stated that the informant only saw them and thereafter he concealed himself in the *Palash* forest and he came out only when his villagers assembled there and the darkness started clearing. Thus the informant, from the plain reading of the F.I.R. is not the eye witness to the occurrence, nor has he made any allegation therein, but when he was examined in the Court as P.W.10, he made improvements in the *fardbeyan* due to admitted previous enmity and stated that four named accused persons, including these appellants, and two to three other unknown persons variously armed by *Lathi*, *Tangi* and *Barchi* were assaulting Rohan Chaudhary and both his sons. This is a clear improvement upon the statement of the informant given before the police, which is also admitted by P.W.-12 Bharat Lal Tiwari, the Investigating Officer of the case, while his attention was drawn towards the statement of the informant made before him as recorded in the *fardbeyan*. Learned counsel submitted that in view of the admitted enmity between the parties, the statement of the informant is absolutely unbelievable, in as much as, had the informant seen the appellants assaulting his

own sons, he would have raised alarm but he admitted that he did not raise any alarm and concealed himself. Learned counsel further submitted that though the informant has taken names of four accused persons in the *fardbeyan* as also in his evidence as P.W.-10, but none of the witnesses examined on behalf of the prosecution have stated that the informant informed them that the other two accused persons namely Suresh Chaudhary and Sarju Mamrik had also assaulted the three deceased. Learned counsel accordingly, submitted that it is a clear case of making improvement by the informant on his previous statement given before the police, due to previous admitted enmity, and his evidence cannot be relied upon.

17. Learned counsel for the defence has also drawn our attention towards the evidence of P.W.-11 Dr. Ramanand Sah, who had conducted the *post-mortem* examination on all the three deceased. In his evidence the doctor found on dissection of the dead body of Kanti Mandal that there were fractures of the left temporal bone, right parietal bone and of frontal bone. On further dissection there was laceration of connecting brain and maninges and the blood clots were found present in the cranium. Learned counsel submitted that with this injury of brain the deceased Kanti Mandal, even while he was alive, must have been completely unconscious and there was no occasion for him to disclose anything about the occurrence. Learned counsel accordingly, submitted that even that part of the statement of some of the witnesses including P.W.-10 Bhola Mandal, that Kanti Mandal, while being taken to hospital, gained consciousness and informed that they were assaulted by both these appellants, cannot just be believed and all these statements are only improvements on the prosecution case by the informant P.W.-10 Bhola Mandal and the other interested witnesses.

18. Learned counsel for the defence has further submitted that even P.W.-4 Madan Chaudhary, though he has been declared hostile,

but he is the son of one of the deceased and he has clearly stated that neither of the injured were in a position to speak or to make any gesture. He has also stated that when upon getting the information this witness went to the place of occurrence, he was accompanied even by the informant and one of the accused appellant, which clearly falsifies the prosecution case. Learned counsel accordingly, submitted that the prosecution has failed to bring home the charge against the accused persons beyond all reasonable doubts and this is a fit case in which the appellants ought to have been given at least the benefit of doubt.

19. Learned counsel for the State on the other hand has opposed the prayer and has submitted that the prosecution has been able to bring home the charge against the appellants beyond all reasonable doubts. It is submitted that it is a well settled principle of law that the F.I.R. is not the encyclopedia of the entire occurrence. It is submitted that the informant stated that he had seen the accused persons at the place of occurrence when he reached there upon hearing the alarm raised by his sons. This clearly shows that he is an eye witness to the occurrence and in his evidence he has stated that all the accused persons including these appellants were armed with *Lathi, Tangi* and *Barchi* and they were assaulting his sons and Rohan Chaudhary. It is submitted that the ocular evidence of P.W.-10 informant Bhola Mandal and the other witnesses who were informed by Bhola Mandal about the occurrence, are fully corroborated by the medical evidence of P.W.-11 Dr. Ramanand Sah, who found the *ante-mortem* grievous injuries on all the dead bodies and has stated that the injuries, either singularly or collectively, were sufficient to cause death in the normal course of nature. Learned counsel submitted that the prosecution has been able to bring home the charge against the appellants beyond all reasonable doubts and there is no illegality in the impugned Judgement of conviction and Order of sentence.

20. Having heard learned counsels for both the sides and upon going through the record, we find force in the submission of the learned counsel for the defence that the prosecution has not come up with clean hands in this case. The F.I.R. clearly shows that the informant is not the eye witness to the occurrence, rather the time of occurrence was still dark and upon seeing the accused persons he had concealed himself in the forest. This witness came out of the forest only when his villagers assembled there and when the darkness had started clearing and he came to the place of occurrence along with the villagers when everything was over and the culprits had already fled away. The fact remains that the informant has made improvements over his statements made in the *fardbeyan* by alleging that the named accused persons were variously armed by *Lathi*, *Barchi* and *Tanga*, and he had seen them assaulting Rohan Chaudhary, Kanti Mandal and Makuni Mandal. The fact remains that though it is admitted that upon the alarm raised several persons of Narhibaran village had assembled at the place of occurrence, but the statement of none of them was recorded by the police and there is no other eye witness to the occurrence. Though P.W.-1 Sitaram Mandal, P.W.-3 Dhaneshwar Layak and P.W.-6 Upendra Chaudhary have stated that Bhola Mandal informed them about the occurrence naming these appellants, but they have not named the other two named accused against whom also allegations have been made by P.W.-10 Bhola Mandal in his evidence. We are of the considered view that in absence of corroboration of the evidence of P.W.-10 Bhola Mandal by any other eye witness, it is not safe to place reliance solely on his evidence in view of the fact that he is a highly interested witness, the long drawn enmity between the parties is admitted by him, and he has made improvements over his earlier versions in the *fardbeyan*.

21. This apart, we also find that the occurrence had taken place on a road in a forest, while the deceased and the informant were going to another village for bringing paddy straw. The time of occurrence is very early morning, when in absence of any knowledge to the accused persons, their presence at the place of occurrence from before is absolutely doubtful. There is no evidence on the record to show that the accused appellants had any knowledge that the deceased were to go to bring paddy straw from another village and they were to cross the forest in the early morning when it was still dark. In that view of the matter, the presence of the accused appellants at the place of occurrence was absolutely doubtful.

22. This apart, the evidence of P.W.-12 Bharat Lal Tiwari, Investigating Officer, itself makes the recording of the *fardbeyan* doubtful and it clearly indicates that some other version of the *fardbeyan* has been concealed by the prosecution. The Investigating Officer has clearly stated in his evidence that while he was recording the *fardbeyan* of the informant near Motihara River, he had sent injured Makuni Mandal on police jeep for treatment. Had that been so, there was no occasion of recording in the *fardbeyan* that after the death of Makuni Mandal the dead body was brought to the police station and other such facts which are subsequent to sending Makuni Mandal for treatment. This clearly indicates that the *fardbeyan* was not recorded near Motihara river, rather it was recorded at the police station. Indeed, P.W.-9 Prabhakar Manjhi, who is a witness to the *fardbeyan*, has clearly stated that it was recorded at the police station. In the FIR the informant had also stated that he had brought the dead body of his son Kanti Mandal to the police station. But in his cross-examination he has stated that he did not come to the police station, rather he went there only in the evening of Monday.

23. Last but not the least, though the witnesses have stated that Kanti Mandal had also informed that they were assaulted by both

these appellants also, their evidence cannot be believed in view of the injury sustained by Kanti Mandal. The evidence of P.W.-11 Dr. Ramanand Sah and the *post-mortem* report which was proved as Exhibits 2/1 clearly shows that the brain and maninges of Kanti Mandal were lacerated following the fractures in the frontal, temporal and parietal bones and blood clots were found present in the cranium, which clearly shows that after the assault the deceased must have been unconscious until his death and there was no question of his gaining consciousness with such brain injuries. Even the informant P.W.-10 has stated that when he reached the place of occurrence Kanti Mandal was unconscious. The evidence of P.W.-4 Madan Choudhary clearly shows that neither of the injured was in a position to speak or to make any gesture. He has clearly stated that the informant as also one of the appellant Indu Mandal had gone to the place of occurrence along with him. There is nothing on the record to discredit his evidence, as the I.O., P.W.-12 Bharat Lal Tewari has clearly stated in his cross-examination that he is a witness to the inquest report of the dead body of his father, but his statement was not recorded by him. Thus, there was no occasion for the prosecution to declare this witness hostile. He is the son of one of the deceased and his evidence is more reliable and also corroborated by the medical evidence.

24. For the foregoing reasons, we are of the considered view that the prosecution has not been able to bring home the charge against the appellants beyond all reasonable doubts, and though it is a case of triple murder, but in the facts and circumstances of this case, the appellants are entitled at least to the benefit of doubt.

25. Accordingly, the impugned Judgement of conviction and Order of sentence dated 30.04.1992 passed by the learned 2nd Additional Sessions Judge, Dumka, in S.C. No. 259 of 1991, are hereby, set aside. The appellants are given the benefit of doubt and

they are acquitted of the charge. The appellants are on bail and they are discharged from the liabilities of their respective bail bonds.

26. This appeal is accordingly, allowed. Let the Lower Court Records be sent back forthwith along with the copy of this Judgement.

(H.C. Mishra, J.)

Dr. S.N. Pathak, J.:-

(Dr. S.N. Pathak, J.)

Jharkhand High Court, Ranchi.
Dated the 3rd of April, 2017.
D.S./N.A.F.R.